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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Unknown Respondents

MUR 6642

**CELA**

**SECOND GENERAL COUNSEL'S REPORT**

**I. ACTIONS RECOMMENDED**

We recommend that the Commission: (1) substitute the name Christopher Kauffman in the place of "Unknown Respondents" in the Commission's previous findings in this matter; (2) take no further action other than to approve a letter of caution as to Christopher Kauffman's violations of 2 U.S.C. §§ 441d(a) and 434(b)(4)(H)(iii), (c)(1), and/or (g); (3) find no reason to believe that Christopher Kauffman violated 2 U.S.C. §§ 432, 433, and 434; and (4) close the file.

**II. INTRODUCTION**

On June 25, 2013, the Commission found reason to believe that Unknown Respondents violated the disclaimer and independent reporting provisions of the Federal Election Campaign Act, as amended, (the "Act") in connection with the billboard advertisement "FIRE KLOBUCHAR!," and authorized an investigation.<sup>1</sup> The Commission took no action at that time with respect to the allegation that Unknown Respondents violated 2 U.S.C. §§ 432, 433, and 434 by failing to register and report as a political committee.<sup>2</sup>

As a result of our investigation, we have determined that Christopher Kauffman of Hanover, Minnesota, paid \$3,000 to produce and lease the space for the billboard advertisement. Based upon the limited amount in violation and the Commission's treatment of other matters involving similar facts, we recommend that the Commission take no further action as to the

<sup>1</sup> Certification, MUR 6642 (Unknown Respondents) (June 27, 2013); *see* 2 U.S.C. §§ 441d; 434(b)(4)(H)(iii), (c), (g).

<sup>2</sup> Certification, MUR 6642 (June 27, 2013).

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1 allegations that Christopher Kauffman violated 2 U.S.C. §§ 441d(a) and 434(b)(4)(H)(iii), (c)(1),  
2 and/or (g) other than to issue a letter of caution. Because we conclude that Kauffman was not  
3 required to register and report as a political committee, we further recommend that the  
4 Commission find no reason to believe that Christopher Kauffman violated 2 U.S.C. §§ 432, 433,  
5 and 434.

### 6 III. SUMMARY OF INVESTIGATION

7 The billboard advertisement at issue in this matter contained the slogan, "FIRE  
8 KLOBUCHAR!" with a disclaimer that stated, "NOT PAID FOR BY ANY CANDIDATE  
9 RUNNING FOR OFFICE."<sup>3</sup> The billboard indicated that Franklin Outdoor Advertising  
10 ("Franklin") leased the advertising space. We therefore contacted Franklin to determine the  
11 identity of the lessee. Franklin informed us that Kauffman had paid for the space.<sup>4</sup> Kauffman  
12 subsequently confirmed that he was responsible for the advertisement.<sup>5</sup>

13 Kauffman resides in Hanover, Minnesota and owns his own business, K-Manufacturing.<sup>6</sup>  
14 In January 2013, Kauffman became Mayor of Hanover; he previously was a city councilman.<sup>7</sup>

15 Documents produced by Franklin indicate that on August 1, 2012, Kauffman contacted  
16 Chris Barta, a sales manager at Franklin, seeking to place a billboard advertisement in "a high  
17 visibility spot" on Interstate 94 in the Albertville, Minnesota, area containing the message,

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<sup>3</sup> Compl., Ex. A.

<sup>4</sup> See Letter from James Braith, Franklin Outdoor Adver., to Jin Lee, FEC (Sept. 4, 2013) ("Braith Letter"), Attach. A at 1.

<sup>5</sup> See Email from Christopher Kauffman to Jin Lee (Dec. 3, 2013) ("Kauffman Response"), Attach. B; Report of Investigation of Christopher Kauffman (Dec. 5, 2013) ("Kauffman ROI"), Attach. C.

<sup>6</sup> Kauffman ROI at 1.

<sup>7</sup> *Id.*

1 "FIRE KLOBUCHAR!"<sup>8</sup> Kauffman explained that he contacted Franklin to make a simple  
2 statement expressing his frustration with Senator Amy Klobuchar.<sup>9</sup>

3 On August 3, 2012, Barta sent Kauffman an invoice, attaching a proof for the slogan  
4 "FIRE KLOBUCHAR!" and a disclaimer stating "NOT PAID FOR BY ANY CANDIDATE  
5 RUNNING FOR OFFICE."<sup>10</sup> On August 6, 2012, Kauffman and Franklin entered into a  
6 contract providing that Kauffman would pay Franklin \$3,000 in total — \$2,000 to lease Sign  
7 #418A and \$1,000 to install and produce the advertisement.<sup>11</sup>

8 On August 10, 2012, Kauffman approved the proof attached to the August 3 Invoice and  
9 authorized Franklin to proceed with producing and installing the advertisement,<sup>12</sup> which Franklin  
10 completed August 21, 2012.<sup>13</sup>

11 In early September 2012, Franklin informed Kauffman that it had received a telephone  
12 call complaining about the disclaimer in the advertisement, and Franklin agreed to revise the  
13 disclaimer at no additional cost to Kauffman.<sup>14</sup> Kauffman asked his contact at Franklin if it  
14 would be "acceptable to just put 'paid for by C. Kauffman,'" explaining that he "googled this  
15 and it doesn't really id [sic] anyone in particular. Let me know what you think."<sup>15</sup>  
16 Subsequently, Franklin modified the advertisement's disclaimer to: "PAID FOR BY C.

<sup>8</sup> Email from Christopher Kauffman to Chris Barta, Franklin Outdoor Adver. (Aug. 1, 2012), Attach. D.

<sup>9</sup> Kauffman Response; Kauffman ROI at 1.

<sup>10</sup> Franklin Outdoor Advertising Invoice (Aug. 3, 2012) ("Aug. 3 Invoice"), Attach. E.

<sup>11</sup> See Braith Letter; Contract No. 12B080101 (Aug. 6, 2012), Attach. A at 2. According to Franklin, the traffic count for Sign #418A is 73,126 vehicles per day. See <http://franklinoutdoor.com/sign.php?id=329>, Attach. F.

<sup>12</sup> See Email from Chris Kauffman to Chris Barta (Aug. 10, 2012), Attach. G.

<sup>13</sup> See Email from Chris Kauffman to Chris Barta (Aug. 27, 2012), Attach. H.

<sup>14</sup> See Kauffman Response; Kauffman ROI at 1; Braith Letter.

<sup>15</sup> Email from Chris Kauffman to Chris Barta (Sept. 4, 2012), Attach. I.

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1 KAUFFMAN, 18351 TERRITORIAL RD. DAYTON, MN, AND NOT AUTHORIZED BY  
2 ANY CANDIDATE OR CANDIDATE'S COMMITTEE."<sup>16</sup> That disclaimer remained in place  
3 through the date of the election.<sup>17</sup>

4 We asked Kauffman why he sought to include only the first initial of his first name in the  
5 disclaimer. He stated that he was concerned about being identified and did not want to receive  
6 "hate mail."<sup>18</sup> Kauffman further contends that he was unfamiliar with the legal requirements for  
7 disclaimers on political advertisement until he read the Factual and Legal Analysis of the  
8 Commission in this matter, and that he relied on Franklin to ensure that the disclaimer complied  
9 with relevant law.<sup>19</sup>

10 **IV. LEGAL ANALYSIS**

11 **A. The Amount in Violation Does Not Warrant Further Commission Action**

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13 As set forth in the Commission's Factual and Legal Analysis, the disclaimer here did not  
14 satisfy the requirements of the Act and Commission regulations because it failed to identify the  
15 person who paid for the billboard advertisement.<sup>20</sup> Kauffman's effort to remedy the alleged  
16 violation after receiving the Complaint was also inadequate, as he included only his first initial,

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<sup>16</sup> See Email from Franklin Outdoor (Sept. 24, 2012), Attach. J; Braith Letter; Proof, Attach. A at 3.

<sup>17</sup> Kauffman ROI at 2.

<sup>18</sup> *Id.* at 1-2.

<sup>19</sup> See *id.* at 2; Kauffman Response (stating that Franklin agreed "to fix the sign" free of charge and that he "considered the issue fixed").

<sup>20</sup> Any person who makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate must include a disclaimer on any such communication. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(2). If the communication is not authorized by a candidate or an authorized committee, the disclaimer must clearly state the name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication and state that the communication was not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3).

1 not his full name.<sup>21</sup> He further admits that he took this approach to avoid disclosure of his  
2 identity.

3 The information we obtained during the investigation also reflects that Kauffman should  
4 have filed an independent expenditure report with the Commission under 2 U.S.C. § 434(c)(1),  
5 which requires every person to report independent expenditures that exceed \$250 during a  
6 calendar year.<sup>22</sup>

7 Nonetheless, the full cost of the advertisement at issue here was only \$3,000. In previous  
8 matters involving similar violations, the Commission has not pursued cases where the apparent  
9 cost of the communication was *de minimis*.<sup>23</sup> While some matters may present circumstances  
10 beyond the minimal amount in violation that recommend proceeding with further administrative  
11 action,<sup>24</sup> we are aware of no instance in which the Commission has relied upon the scale of an  
12 advertisement's potential audience to pursue conciliation when the amount in violation otherwise  
13 was *de minimis*.<sup>25</sup> Nor does Kauffman's stated desire to limit discovery of his identity through

<sup>21</sup> 11 C.F.R. § 110.11(b)(3).

<sup>22</sup> The Commission previously determined that Kauffman's advertisement expressly advocated the defeat of Senator Klobuchar. *See* Factual and Legal Analysis at 4, MUR 6642. The advertisement therefore constituted an independent expenditure. 2 U.S.C. § 431(17).

<sup>23</sup> *See, e.g.*, MUR 6627 (Mike Moon for Congress) (dismissing allegations as to campaign signs with no disclaimer based on *de minimis* amount of money involved); MUR 6377 (Harry Reid Votes) (dismissing allegation as to radio advertisement with partial disclaimer cost of advertisement was \$2,135); MUR 6125 (McClintock for Congress) (dismissing disclaimer allegation as to automated calls based on small amount in violation, possible vendor error, and candidate's identification of himself in calls); MUR 6011 (Darrell Glasper) (dismissing with admonishment allegations concerning failure to include proper disclaimer and failure to report independent expenditure where cost of calls were likely less than \$1,000). In one matter, MUR 4837 (Boyd for Congress), the Commission entered into a conciliation agreement with respondents where the amount in violation was \$1,000 and respondents paid a civil penalty of \$500. That matter was resolved in 1999, however, and the Commission has taken a contrary approach in its handling of similar matters since that time, as noted here.

<sup>24</sup> *See* Factual and Legal Analysis at 3, MUR 6675 (Vernon Parler for Congress).

<sup>25</sup> In MUR 6137 (Informed Catholic Citizens), the Commission found reason to believe that respondents violated 2 U.S.C. § 434(c) and 441d(a) by failing to include a disclaimer in recorded telephone calls and failing to report those calls as an independent expenditure. *See* Certification, MUR 6137 (Jan. 24, 2011). After conducting an investigation, this Office recommended that the Commission take no further action as to those allegations because

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1 the disclaimer suggest that the Commission should take a different approach in this case.  
2 Although Kauffman concedes that he sought to limit the likelihood that he would be identified  
3 through the disclaimer,<sup>26</sup> his correspondence with Franklin tends to corroborate his claim that he  
4 relied on Franklin's experience with legal issues in advertising to determine whether using only  
5 his first initial in the disclaimer "would [be] acceptable."<sup>27</sup>

6 We therefore conclude, consistent with prior Commission practice, that further  
7 enforcement proceedings in this matter would be unwarranted. The Commission should  
8 nonetheless send Kauffman a letter of caution in light of the inadequate remedial measures he  
9 took following his actual notice of the Complaint. Accordingly, we recommend that the  
10 Commission take no further action as to Christopher Kauffman concerning the alleged violation  
11 of 2 U.S.C. §§ 441d(a) and 434(b)(4)(H)(iii), (c)(1), and/or (g), other than to issue a letter of  
12 caution.<sup>28</sup>

13 **B. Kauffman Need Not Register and Report as a Political Committee**

14 The Act and Commission regulations define a "political committee" as "any committee,  
15 club, association or *other group of persons* which receives contributions aggregating in excess of  
16 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000  
17 during a calendar year."<sup>29</sup> In *Buckley v. Valeo*, the Supreme Court concluded that the term

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the amount in violation was only \$2,723.92. See General Counsel's Report #2, MUR 6137 (Nov. 13, 2011). The Commission failed to approve the recommendation by a vote of 3-3. See Certification, MUR 6137 (Oct. 21, 2011). Although the dissenting Commissioners proposed entering into conciliation with a statutory penalty, there were insufficient votes to take such action. *Id.* See also Statement of Reasons of Chair Cynthia L. Bauerly and Commissioners Steven T. Walther and Ellen L. Weintraub, MUR 6137 (Nov. 21, 2011). The Commission ultimately voted to close the file and send a letter of caution. See Certification, MUR 6137 (Oct. 21, 2011).

<sup>26</sup> Kauffman ROI at 1-2.

<sup>27</sup> Email from Chris Kauffman to Chris Barta (Sept. 4, 2012), Attach. I; see Kaufmann Response.

<sup>28</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>29</sup> 2 U.S.C. § 431(4)(A); 11 C.F.R. § 100.5(a) (emphasis added).

1 “political committee” “need only encompass organizations that are under the control of a  
2 candidate or the major purpose of which is the nomination or election of a candidate.”<sup>30</sup>

3 The Complaint alleges that if Unknown Respondents spent more than \$1,000 on the  
4 billboard advertisement, then they may have triggered political committee status, requiring them  
5 to register and report with the Commission.<sup>31</sup> Here, the investigation established that  
6 Christopher Kauffman spent \$3,000 on the advertisement. Although the monetary threshold has  
7 been satisfied, the evidence indicates that Kauffman was acting as one individual, not a “group  
8 of persons,” as set forth in section 431(4)(A). When Kauffman first contacted Franklin about  
9 leasing the advertising space at issue, he stated that “[t]his would be my personal deal.”<sup>32</sup> In  
10 addition, the investigation did not uncover any information that Kauffman was working in  
11 concert with any other individuals or groups — Franklin communicated with and billed only  
12 Kauffman, and Kauffman confirmed that he used his own personal funds to pay for the  
13 advertisement.<sup>33</sup> Because the evidence establishes that Kauffman was acting alone in funding  
14 the independent expenditure at issue, he does not meet the definition of political committee  
15 under section 431(4)(A).<sup>34</sup> We therefore recommend that the Commission find no reason to  
16 believe that Kauffman violated 2 U.S.C. §§ 432, 433, and 434, and close the file.

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<sup>30</sup> 424 U.S. 1, 79 (1976).

<sup>31</sup> Compl. at 2.

<sup>32</sup> Email from Chris Kauffman to Chris Barta (Aug. 1, 2012).

<sup>33</sup> Kauffman ROI at 2.

<sup>34</sup> Cf. Advisory Op. 2009-13 (The Black Rock Group) (where one LLC provides consulting services as a commercial vendor to its client LLC, entities do not form a “group of persons” and are not a political committee); Advisory Op. 2009-02 (True Patriot Network) (single-member LLC is not a political committee under the Act because it is not a “group of persons”).

V. RECOMMENDATIONS

1. Substitute the name Christopher Kauffman in the place of "Unknown Respondents" in the Commission's previous findings in MUR 6642;
2. Take no further action as to the allegations that Christopher Kauffman violated 2 U.S.C. §§ 441d(a) and 434(b)(4)(H)(iii), (c)(1), and/or (g);
3. Find no reason to believe that Christopher Kauffman violated 2 U.S.C. §§ 432, 433, and 434;
2. Approve the appropriate letter of caution; and
3. Close the file.

Date

2/11/14

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